Team #32

No. 1788-850191

IN THE SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF CALIFORNIA, PETITIONER

V.

NICK NADAULD, RESPONDENT

ORDER GRANTING WRIT OF CERTIORARI

BRIEF FOR THE RESPONDENT

Team #32

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUES v

STATEMENT OF THE CASE 1

1. Statement of Facts 1

2. Procedural History 4

SUMMARY OF ARGUMENT 5

STANDARD OF REVIEW 6

ARGUMENT 6

I. POLICE VIOLATED MR. NADAULD'S FOURTH AMENDMENT RIGHTS BY RETRIEVING NADAULD'S INFORMATION FROM THE AUTOMATIC LICENSE PLATE RECOGNITION DATABASE WITHOUT A WARRANT. 6

A. Nadauld Had a Subjective Expectation of Privacy in the Aggregate Collection of His License Plate Data. 6

B. Nadauld's Expectation of Privacy in the Time, Date, and Location of His Vehicle Is One Society Would Be Willing to Recognize as Reasonable Because It Exposes Intimate Details of His Personal Life. 7

C. There Is a Societal Interest in Preserving One's Right to Not Have Every Movement Stored in a Database by the Government. 13

II. POLICE VIOLATED THE FOURTH AMENDMENT BY SEARCHING MR. NADAULD'S HOME AGAINST HIS WILL ABSENT A VALID WARRANT, PROBABLE CAUSE, OR EXIGENT CIRCUMSTANCES TO JUSTIFY THE SEARCH. 14

A. The Totality of the Circumstances Suggested There Was No Probable Cause to Search Nadauld's Residence. 16

B. No Valid Exigencies Created a Compelling Law Enforcement Need to Search Nadauld's Home. 18

C. The Only Way Police Could Enter Nadauld's Home Was Through Consent. 22

D. Evidence Obtained from the Unconstitutional Search of Nadauld's Home Must Be Suppressed Because It Is Tainted. 23

CONCLUSION 25

TABLE OF AUTHORITIES

Case Authority

Supreme Court of the United States — Page(s)

Aguilar v. Texas,
378 U.S. 108 (1964) 18

Brinegar v. United States,
338 U.S. 160 (1949) 15

Byrd v. United States,
138 S. Ct. 1518 (2018) 11

California v. Ciraolo,
476 U.S. 207 (1986) 11, 12

Camara v. Municipal Court of City and County of San Francisco,
387 U.S. 523 (1967) 15

Caniglia v. Strom,
141 S. Ct. 1596 (2021) 17, 18, 23

Carpenter v. United States,
138 S. Ct. 2206 (2018) ..... *passim*

Collins v. Virginia,
138 S. Ct. 1663 (2018) 22

Florida v. Jardines,
569 U.S. 1 (2013) 8, 23

Groh v. Ramirez,
540 U.S. 551 (2004) 15

Illinois v. Gates,
462 U.S. 213 (1983) 16

I.N.S. v. Delgado,
466 U.S. 210 (1984) 15

Johnson v. United States,
333 U.S. 10 (1948) 22

Katz v. United States,
389 U.S. 347 (1967) 6, 7, 10

TABLE OF AUTHORITIES (CONTINUED)

Kentucky v. King,
563 U.S. 452 (2011) ..... *passim*

Kyllo v. United States,
533 U.S. 27 (2001) 8

Lange v. California,
141 S. Ct. 2011 (2021) 18, 19

Michigan v. Fisher,
558 U.S. 45 (2009) 19, 20

Miller v. United States,
357 U.S. 301 (1958) 16

Mincey v. Arizona,
437 U.S. 385 (1978) 18, 19, 20

New York v. Class,
475 U.S. 106 (1986) 14

Oliver v. United States,
466 U.S. 170 (1984) 11

Ornelas v. United States,
517 U.S. 690 (1996) 6

Payton v. New York,
455 U.S. 573 (1980) 15, 16, 18

Schneckloth v. Bustamonte,
412 U.S. 219 (1973) 22

United States v. Di Re,
332 U.S. 581 (1948) 13

United States v. Jones,
565 U.S. 400 (2012) 9, 10

United States v. Knotts,
460 U.S. 276 (1983) 11, 12

Warden v. Hayden,
387 U.S. 294 (1967) 18, 20

TABLE OF AUTHORITIES (CONTINUED)

Wong Sun v. United States,
371 U.S. 471 (1963) 24, 25

Wyoming v. Houghton,
526 U.S. 295 (1999) 22

United States Courts of Appeals

United States v. Gust,
405 F.3d 797 (9th Cir. 2005) 6

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV ..... *passim*

OTHER AUTHORITIES

Criminal Procedure-Fourth Amendment-Massachusetts Supreme Judicial Court Holds That Use of Automated License Plate Readers May Constitute A Search. - Commonwealth v. McCarthy, 142 N.E.3d 1090 (Mass. 2020), 134 Harv. L. Rev. 2887, 2894 (2021) 14

Laura K. Donahue, *The Original Fourth Amendment*,
83 U. Chi. L. Rev. 1181 (2016) 22

Theophilus O. Agbi, *Hands Off My License Plate: The Case for Why the Fourth Amendment Protects License Plates from Random Police Searches*,
45 Vt. L. Rev. 125 (2020) ..... *passim*

STATEMENT OF THE ISSUES

I. Whether law enforcement's warrantless examination of a private citizen's personal information collected by the Automatic License Plate Reader database violates an individual's Fourth Amendment rights.

II. Whether the warrantless entry of an individual's home absent probable cause, exigent circumstances, or consent violates an individual's Fourth Amendment rights.

STATEMENT OF THE CASE

Statement of Facts

On September 14, 2021, a shooter at Balboa Park fired an M16A1 ("M16") automatic assault rifle at a crowd from a rooftop, killing nine people and wounding six other individuals. R. at 2. A San Diego Times article from September 14, 2021, entitled *Mass Shooting at Balboa Park – 9 Killed, 6 Wounded*, noted that "San Diego Law enforcement assure[d] that it will stop at nothing to find the shooter and bring him or her to justice." Exhibit D. Another San Diego Times article from September 21, 2021, entitled *Balboa Shooter Manhunt Continues* noted that "many have called law enforcement's failure to find the unknown gunman a humiliating catastrophe." Exhibit E. Community and family members of victims were featured scrutinizing law enforcement in the article, and a wife of one of the victims even said "these police are lazy. They are sitting on their ***es eating donuts paid for by my dead husband's tax money." Exhibit E.

Facing intense media and community pressure to find the Balboa Park Shooter, law enforcement analyzed surveillance footage from inside and around Balboa Park and located forty unidentified people who left the park on foot during and immediately after the shooting. R. at 3. However, the surveillance footage was so blurry that it was impossible for law enforcement to identify the forty unidentified individuals who fled the park on foot. R. at 3. After failing to match the faces of these forty unidentified individuals in the government's database, law enforcement observed a recording of fifty vehicles leaving the scene before police arrived at Balboa Park on September 14, 2021. R. at 3. Police checked the database of the fifty vehicles that left the scene, but law enforcement could not find any evidence of prior violent crimes from the owners of the fifty vehicles. R. at 3. Law enforcement cross-referenced the list of fifty vehicles with a list of assault rifle owners but could still not find any of the owners of the fifty

vehicles on the list of assault rifle owners. R. at 3. Law enforcement located Frank McKennery on the list of fifty vehicle owners who fled the scene. R. at 3.

Police also found Nick Nadauld's name on a list of assault rifle owners but did not search through any lists of law enforcement personnel who owned assault rifles. R. at 3. Still facing immense media and public pressure to find the Balboa Park Shooter, police examined the Automatic License Plate Recognition database ("ALPR") to intensely track the movements of the fifty vehicles that left Balboa Park. R. at 3. Police typically use ALPR to check if a vehicle is properly registered or licensed. R. at 3; Exhibit K. To retrieve information for the ALPR database, law enforcement mounts cameras which scan cars' license plate information and compares the information with law enforcement's database. Exhibit K. Using the ALPR database, police can locate a specific license plate at any precise time and location. Exhibit K. Law enforcement utilized this database to watch the movements of the fifty vehicles that left Balboa Park. R. at 3. Police also accessed the database to track vehicles owned by people on the assault rifle list. R. at 3. The ALPR database includes information on many cars not involved in the Balboa Park Shooting. R. at 3; Exhibit K.

Police cross-referenced vehicles' movements from the assault rifle list and the list of fifty vehicles that left Balboa Park. R. at 3-4. After cross-referencing, police believed that Nadauld's vehicle and McKennery's vehicle had overlap of being at the same locations at similar times. R. at 4. Based on this information, police secretly investigated the ten residences that corresponded most to the driving location data of the fifty vehicles that left Balboa Park. R. at 4. Nadauld's was one of the ten residences observed. R. at 4. On September 24, 2021, three days after a highly critical article from the San Diego Times, police placed cameras on utility poles so they could secretly monitor these residences. Exhibit E; R. at 4. On September 25, 2021, law enforcement

sent a letter to each of the ten residences, stating that in just one month, law enforcement would visit to verify whether their assault rifles were rendered inoperable pursuant to California Penal Code Section 30915. R. at 4. Nadauld did not receive this letter until September 27, 2021. R. at 4.

Police received an anonymous call on September 28, 2021, with a voice saying, "This is the Balboa Park Shooter. This time, it's gonna be a school." R. at 4. On September 29, 2021, one of the cameras police placed near Nadauld's residence recorded McKennery handing Nadauld a large duffle bag and then leaving the property. R. at 4. Based on this secret recording from law enforcement, FBI Officers Jack Hawkins and Jennifer Maldonado went to Nadauld's residence. R. at 4.

Officers Hawkins and Maldonado asked Nadauld about a rifle he inherited from his father. Exhibit A. Shocked by the officers' unannounced and unprovoked visit, Nadauld told the two officers, "I thought you guys were coming in like a month to talk about that." Exhibit A. Officer Hawkins told Nadauld that he would like to see the gun. Exhibit A. Nadauld refused to show the two officers the rifle. Exhibit A. Officer Hawkins insisted that he would need to come inside the house to evaluate if the rifle had been rendered inoperable. Exhibit A. Nadauld still did not allow the two officers to enter the property. Exhibit A. Despite Nadauld not consenting to a search, Officer Hawkins barged into the home. Exhibit A. Officer Maldonado later entered the home and located an M16 assault rifle. Exhibit A. Officer Hawkins then told Nadauld that he was the prime suspect in the Balboa Park Shooting. Exhibit A. Nadauld then confessed to giving the gun to McKennery but insisted that McKennery was only using the gun for target shooting in Arizona. Exhibit A. Police arrested Nadauld. Exhibit A.

The FBI later found the man believed to be the Balboa Park Shooter, Frank McKennery, dead at his home. Exhibit F.

Procedural History

On October 1, 2021, Nick Nadauld was charged with one count for failure to comply with the assault rifle requirements pursuant to California Penal Code Section 30915, one count of lending an assault weapon under California Penal Code Section 30600, nine counts of involuntary manslaughter pursuant to California Penal Code Section 192, and nine counts of second-degree murder under California Penal Code Section 187. R. at 1. Nadauld filed a motion to suppress evidence collected on September 29, 2021, the date of his initial arrest in the instant case, pursuant to California Penal Code Section 1538.5 with the Superior Court of California for the County of San Diego. R. at 1, 4. On November 21, 2021, the superior court denied Nadauld's motion to suppress evidence. R. at 12.

On April 5, 2022, Nadauld filed an appeal of the superior court's decision to the Court of Appeal of the State of California for the Fourth Appellate District. R. at 13. The appeal was argued and submitted on May 4, 2022, before California Appellate Judges Connor Middlebrooks, Tamara Swan, and Peter Hapley. R. at 13. On June 3, 2022, Judge Middlebrooks wrote the opinion for the Court of Appeal, and the court granted Nadauld's motion to suppress evidence. R. at 13, 21. The Court of Appeal reversed the superior court's decision, determining that the evidence was obtained through unconstitutional practices and should be excluded. R. at 21. The case was remanded for further proceedings consistent with the Court of Appeal's decision.

On September 23, 2022, the Supreme Court of the United States granted petition for writ of certiorari. R. at 1.

SUMMARY OF ARGUMENT

This Court should affirm the Court of Appeal's ruling because the unwarranted historical collection of Mr. Nadauld's aggregate ALPR data is an unreasonable search that violates the Fourth Amendment. The government violated Nadauld's Fourth Amendment rights because he had a subjective expectation of privacy in the whole of his visible movements which the government recorded through its ALPR database. Further, society would be willing to recognize Nadauld's expectation of privacy as reasonable because ALPR data exposes intimate details of his personal life. Ultimately, the nature of the information collected and the duration of government surveillance went beyond the scope of Nadauld's reasonable expectation of privacy, infringing upon his Fourth Amendment rights.

Moreover, this Court should uphold the Court of Appeal's decision to suppress evidence obtained from the unconstitutional and warrantless search of Nadauld's home. Law enforcement engaged in a warrantless search of Nadauld's home without any justifications for bypassing the Fourth Amendment's warrant requirement for home searches. Any search of a residence must be backed by probable cause, however law enforcement only had a few inconclusive leads and vague information prior to entering Nadauld's residence. Prior to the search, officers did not demonstrate that there was a substantial chance or fair probability that Nadauld engaged in criminal activity. Additionally, there were no exigent circumstances to justify law enforcement's unprovoked and unconstitutional entry. There is no showing from the record that Nadauld was attempting to conceal incriminating evidence or escape from the police. Moreover, no emergency medical situation existed to justify law enforcement's entry. Because Nadauld did not consent for the two officers to search the sanctity of his home, the search was unconstitutional.

STANDARD OF REVIEW

Whether an individual possesses a reasonable expectation of privacy under the Fourth Amendment is a question of law and is reviewed de novo. *United States v. Gust*, 405 F.3d 797, 799 (9th Cir. 2005). Further, the issue of probable cause to make a warrantless search should be reviewed de novo. *Ornelas v. United States*, 517 U.S. 690, 691 (1996).

ARGUMENT

I. POLICE VIOLATED MR. NADAULD'S FOURTH AMENDMENT RIGHTS BY RETRIEVING NADAULD'S INFORMATION FROM THE AUTOMATIC LICENSE PLATE RECOGNITION DATABASE WITHOUT A WARRANT.

The Fourth Amendment protects individuals against unreasonable searches and seizures. U.S. Const. amend. IV.

Justice Harlan's concurrence in *Katz v. United States* lays out a two-prong test to determine whether an individual's Fourth Amendment rights have been violated: (1) the individual must have a subjective expectation of privacy; and (2) that expectation must be one that society would be willing to recognize as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967). A person must take reasonable steps to demonstrate a subjective expectation of privacy. *Id.* The second prong is an objective test, requiring that this expectation is one that society would also recognize as reasonable. *Id.*

A. Nadauld Had a Subjective Expectation of Privacy in the Aggregate Collection of His License Plate Data.

Mr. Nadauld fulfilled the subjective prong of *Katz* by exhibiting behavior which indicated that he subjectively believed he had an expectation of privacy in the collection of his license plate data. An individual demonstrates a subjective expectation of privacy when they take reasonable steps to ensure they have privacy in their actions. *Katz*, 389 U.S. at 361. In *Katz*, the petitioner entered the phone booth, closed the door, and paid the toll. *Id.* Each of these steps were

reasonable actions that Katz took to ensure that the contents of his private conversation on the phone were kept out of the public's ear. *Katz*, 389 U.S. at 361.

Here, there was little more that Nadauld could do to demonstrate a subjective expectation of privacy in the collection of his license plate data. R. at 15. To effectively avoid this type of pervasive tracking technology, Nadauld would need to employ illegal techniques such as covering or changing his license plate. R. at 3; Exhibit K. Further, requiring Nadauld to acquire a new car or drive on different streets to avoid this intrusion would be unreasonable because this would severely limit Nadauld's freedom to travel. Exhibit K. It is unreasonable to expect him to avoid certain main roads to ensure that his daily movements are not catalogued by the government. Exhibit K. ALPR devices are purposefully hidden to make them difficult to detect. Exhibit K. Therefore, Nadauld would be less likely to know which roads to avoid to protect his privacy. Exhibit K. Asking people to change how they commute to avoid constant government surveillance would turn Fourth Amendment rights into a restricted privilege rather than a constitutionally protected right.

Nadauld is unfortunately at the mercy of the police force to trust that the collection of this information will not be abused. Ultimately, because Nadauld did not expect the government to track his car movements to such a degree that it would reveal intimate details of his personal life, Naduald exhibited a subjective expectation of privacy. Exhibit K; *Katz*, 389 U.S. at 361.

B. Nadauld's Expectation of Privacy in the Time, Date, and Location of His Vehicle Is One Society Would Be Willing to Recognize as Reasonable Because It Exposes Intimate Details of His Personal Life.

The nature of the technology in question is not in general public use and operates as dragnet surveillance. Exhibit K. Because ALPR technology intensively tracks aggregate personal data, it violates the objective expectation of privacy prong from *Katz*. *Katz*, 389 U.S. at 361.

First, this technology is outside of general public use. R. at 3. Using technology generally outside of public use may be a Fourth Amendment violation because such technology allows police to gather previously unknowable information about a person's private life. *Kyllo v. United States*, 533 U.S. 27, 34 (2001). In *Kyllo*, the police used a thermal imager to see inside of Kyllo's house by detecting the heat coming off different parts of the outside of his home. *Id.* at 35. Had thermal imagers been a tool regularly used by members of the community, Kyllo might not have had an objective expectation of privacy. *Id.* Because thermal imaging technology revealed intimate details within the home and was outside of general public use, such technology violated Kyllo's Fourth Amendment rights. *Id.* at 34.

Here, with the use of ALPR data, the government creates a detailed catalogue of every single license plate that passes by ALPR units and stores that data for up to five years. Exhibit K. The average individual lacks the resources to gather and store such a detailed database of information. Exhibit K. While there are people who could set up a camera and scanning system, ALPR is not ubiquitous enough in present society to support a claim that it is in general public use. R. at 3; Exhibit K. Further, ALPR is outside of general public use as it is a technology almost exclusively employed by the government. *Kyllo*, 533 U.S. at 34; Exhibit K. Nadauld has an objective expectation of privacy because ALPR technology is outside of the general public's use and allows the government insight into the daily lives of millions of people. *Kyllo*, 533 U.S. at 34; *see* Theophilus O. Agbi, *Hands Off My License Plate: The Case for Why the Fourth Amendment Protects License Plates from Random Police Searches*, 45 Vt. L. Rev. 125, 137, 139 (2020) (indicating ALPR technology can scan up to 1,800 license plates per minute).

Just because technology is outside of general public use, does not automatically mean it is categorically prohibited. *See Florida v. Jardines*, 569 U.S. 1, 13 (2013) (determining that devices

outside of general public use can be used with a warrant or under exigent circumstances). Nevertheless, the large-scale nature of ALPR data goes beyond the capabilities of any person or police officer personally keeping track of every license plate that passes by. Exhibit K. The use of ALPR to create an exhaustive list of a person's movements on public roads is still an invasion of privacy that general society would not be willing to recognize as reasonable. *Carpenter v. United States*, 138 S. Ct. 2206, 2223 (2018). It is unlikely that the average person expects their license plate to be recorded every time they travel to certain destinations, especially if an individual desires discretion in the frequency of their visitation to such an area. Exhibit K; *id.* It is equally unlikely that a reasonable person would expect such movements to be stored for up to five years, allowing the government to keep a detailed catalogue of their movements far beyond the scope of any average person's capabilities. Exhibit K; *Carpenter*, 138 S. Ct. at 2223.

Second, this technology operates similarly to a tracker as it collects and stores detailed information about the whereabouts of every car that passes by. Exhibit K; Agbi, *supra*, at 139. In *United States v. Jones*, police placed a tracker on a person's car to see where the car traveled while on public roads. *United States v. Jones*, 565 U.S. 400, 402 (2012). While the majority decided the case using a trespass analysis, Justice Sotomayor's concurring opinion reasoned that tracking a person's every movement for an extended period of time could reveal intimate details of a person's life and chill their associational freedom. *Id.* at 412, 416.

Comprehensive surveillance techniques which allow for the collection of too wide a breadth of personal information violate the Fourth Amendment. *Carpenter*, 138 S. Ct. at 2223. The collection of such detailed personal information allows the government insight into the lives of private citizens far beyond the scope of their necessary investigations. *Id.* In *Carpenter*, the collection of historical Cell Site Location Information ("CSLI") enabled police to track aggregate

and precise location and time data retrieved from people's cellphones. *Carpenter*, 138 S. Ct. at 2223. The combination of the extended periods of time and the extreme accuracy of this surveillance violated the Fourth Amendment because it revealed previously unknowable information that would have been impossible to discover without the use of CSLI. *Id.*

Compared to *Jones*, the Court worried that such intensive tracking by using a cellphone's location was even more invasive than a car tracker as people rarely travel anywhere without their cellphones. *Carpenter*, 138 S. Ct. at 2218 (citing *Jones*, 565 U.S. at 415). Such an invasion reveals their personal associations to a degree far beyond what the police need to investigate criminal behavior and leads to law enforcement having a detailed log of not only criminal behavior, but vast pools of non-criminal, personal behavior. *Id.* at 2223. A major concern of this Court was the fact that companies store historical CSLI data for up to five years. *Id.* at 2218. Such data collection allowed the government to travel backwards in time to see everywhere Carpenter had been over the course of the last five years. *Id.* Additionally, the data collected is not just the data of individuals being investigated, it is the data of every single person using their cellphone. *Id.* This is extremely invasive because the government can access data on individuals even before they are subject to a criminal investigation. *Id.* Importantly, a touchstone of the Fourth Amendment is that it "protects people, not places;" therefore, a person traveling on public roads is still entitled to a reasonable expectation of privacy from the prying eyes of the government. *Katz*, 389 U.S. at 351.

Concerning the instant case, the Superior Court for the County of San Diego improperly reasoned that the collection of ALPR data was sparse and infrequent. R. at 6. In *California v. Ciraolo*, this Court noted that what a person knowingly exposes to the public is not subject to Fourth Amendment protection. *California v. Ciraolo*, 476 U.S. 207, 213 (1986). However, the

aerial surveillance in *Ciraolo* occurred merely on one occasion rather than taking place over the course of an extended period. *Ciraolo*, 476 U.S. at 209. Similarly, *United States v. Knotts* held that a person does not have a reasonable expectation of privacy in their movements when traveling on public roads. *United States v. Knotts*, 460 U.S. 276, 281 (1983). Yet, *Knotts* still carved out exceptions to the public view rule. *Id.* at 284. This Court in *Knotts* explicitly stated that their decision was limited to short-term surveillance rather than technology that acts like a dragnet, picking up every piece of information regardless of the scope of the investigation. *Id.*

This Court also warns against establishing per se rules about the Fourth Amendment, because they place "too restrictive a view of the Fourth Amendment's protections." *Byrd v. United States*, 138 S. Ct. 1518, 1527 (2018). A blanket rule that anytime a person is in public view they have no Fourth Amendment rights to their location draws a narrow understanding of the complex nature of this technology. *Id.* Even though this technology tracks information already made available to the public, its long-term and expansive nature goes beyond the surveillance in *Knotts* and *Ciraolo*. *Knotts*, 460 U.S. at 284; *Ciraolo*, 476 U.S. at 213; *see Oliver v. United States*, 466 U.S. 170, 182-83 (1984) ("the correct inquiry is whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment"). Unlike the present case, the surveillance in *Knotts* and *Ciraolo* lasted a limited and short period of time, only allowing the police to observe the individual within the scope of their investigation. *Knotts*, 460 U.S. at 284; *Ciraolo*, 476 U.S. at 213.

Here, ALPR technology collects a wide range of information, most of which is not essential to any criminal investigation and instead infringes on people's Fourth Amendment rights. Exhibit K. ALPR is therefore much closer to CSLI data because ALPR collects the exact location and time of every single license plate that passes by the ALPR unit for an extended

period of time. Exhibit K; *Carpenter*, 138 S. Ct. at 2218. The surveillance in the instant case is in sharp contrast to the extremely limited scope of the investigations in *Knotts* and *Ciraolo*. Exhibit K; *Knotts*, 460 U.S. at 284; *Ciraolo*, 476 U.S. at 213.

Contrary to the factual circumstances in *Knotts* and *Ciraolo*, the government stores the ALPR data for up to five years. Exhibit K; *Knotts*, 460 U.S. at 284; *Ciraolo*, 476 U.S. at 213. Applying *Carpenter*, the storage of ALPR data allows the police to travel back in time and see the exact events as recorded by the ALPR. Exhibit K; *Carpenter*, 138 S. Ct. at 2218. ALPR data collection also allows the government to keep track of everyone's movements regardless of whether they are under investigation. Exhibit K; Agbi, *supra*, at 158. Due to the specificity and duration of information collected, such unrestricted data collection violates the Fourth Amendment because ALPR is too wide-reaching in the information it collects. Exhibit K; *Carpenter*, 138 S. Ct. at 2223.

Further, allowing the government to expand the use of ALPR technology would result in even more invasive and extensive surveillance that violates the Fourth Amendment. Agbi, *supra*, at 158; *see Carpenter*, 138 S. Ct. at 2223. Although installing only one ALPR at one intersection may seem harmless, left unchecked, this technology could result in a vast network of ALPR that tracks the exact whereabouts of individuals constantly. Agbi, *supra*, at 162. Over extended periods of time, this technology can track the frequency of a person's travel to and from certain destinations which would subject them to unwanted, unnecessary, and unconstitutional surveillance beyond the capabilities of even the most zealous police force. *Id.* The result is a dragnet-type technology which collects every single location and time stamp of a car passing through the streets, enabling the government to watch over the private affairs of individuals beyond the scope of any criminal investigation. *Carpenter*, 138 S. Ct. at 2223. This Court should

rule that ALPR surveillance must be severely limited in scope, otherwise it violates the Fourth Amendment.

C. There Is a Societal Interest in Preserving One's Right to Not Have Every Movement Stored in a Database by the Government.

Preventing the government from being able to use over-intrusive technology to peer into the private lives of individuals is a vital pillar of the Fourth Amendment. The Fourth Amendment's purpose is to protect against "a too permeating police surveillance." *United States v. Di Re*, 332 U.S. 581, 595 (1948). ALPR data creates a detailed list of when cars pass by an ALPR unit, and this data would chill the freedom of association. Abgi, *supra*, at 158; *see Carpenter*, 138 S. Ct. at 2223. ALPR data has the potential to reveal the personal habits of any number of people simply by collecting information on how often they frequent certain locations over an extended period of time. *Carpenter*, 138 S. Ct. at 2223; Agbi, *supra*, at 162. For example, placing ALPR technology at an intersection in front of a church, a medical facility, a liquor store, or any sensitive location could track the frequency of which cars visit these locations. *Carpenter*, 138 S. Ct. at 2222. This would result in the government being able to see how often individuals attend certain religious sites or expose individuals visiting a sensitive medical facility such as an abortion clinic. *Id.* Such personal data is entirely irrelevant to criminal investigations and is instead reason for concern regarding individuals' expectation of privacy. *Id.* Such overbroad and invasive surveillance hints at an oppressive government body which can monitor the public's routines and document very personal aspects of a person's life. *Id.*

While the precision and scope of ALPR data is unclear, police in the instant case were able to identify fifty vehicles leaving Balboa Park directly after the time of the shooting. R. at 3. This indicates that the ALPR database shows the police precise and intimate details of how the cars are traveling, at what time they traveled, and where they might be traveling to. Exhibit K.

Essentially, the precise nature of the information recorded can reveal details about exactly where a person travels to and from and at what times. Exhibit K.

Still, because this technology does not actually record the faces of the people in the car, the government may argue that this technology collects no information on individuals and their habits, only the frequency of which certain cars visit certain places while in plain view. *New York v. Class*, 475 U.S. 106, 114 (1986); Exhibit K. However, there is a strong association between an owner and their car. *See Criminal Procedure-Fourth Amendment-Massachusetts Supreme Judicial Court Holds That Use of Automated License Plate Readers May Constitute A Search. - Commonwealth v. McCarthy, 142 N.E.3d 1090 (Mass. 2020),* 134 Harv. L. Rev. 2887, 2894 (2021). While ALPR technology only photographs the car's license plate, the data is tracking the person's movements. Exhibit K; *Carpenter*, 138 S. Ct. at 2222. Ultimately, the collection of ALPR data provides a unique insight into the intimate details of people's activities and movements. Due to this all-encompassing surveillance, this Court should place limitations on its use to protect the people's Fourth Amendment rights to be free from unwarranted and unreasonable government intrusion into their private lives. Exhibit K; *Carpenter*, 138 S. Ct. at 2222.

II. POLICE VIOLATED THE FOURTH AMENDMENT BY SEARCHING MR. NADAULD'S HOME AGAINST HIS WILL ABSENT A VALID WARRANT, PROBABLE CAUSE, OR EXIGENT CIRCUMSTANCES TO JUSTIFY THE SEARCH.

Officers Hawkins and Maldonado violated the Fourth Amendment when they engaged in a fishing expedition at Mr. Nadauld's property to find evidence absent a warrant, probable cause, exigent circumstances, or consent. R. at 4; *see Payton v. New York*, 445 U.S. 573, 573 (1980) (indicating that the Fourth Amendment draws a firm line at the entrance of one's home); *see also Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (noting that searches inside a home without a warrant

are presumptively unreasonable). Rather than seek a warrant and establish probable cause before searching and entering Nadauld's home, Officers Hawkins and Maldonado attempted to pressure Nadauld into consenting to a search of his home. R. at 24; *see Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967) (expressing that the basic principle of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by the government). Police entered the home because of the intense public pressure and their frustration with Nadauld exercising his constitutional right to not consent to the search of his home. R. at 24, 31; *see I.N.S. v. Delgado*, 466 U.S. 210, 216 (1984).

At the time of entry, the police did not have a reasonable ground for Nadauld's guilt or a fair probability that he committed the crime. *See Brinegar v. United States*, 338 U.S. 160, 175 (1949) (determining that probable cause requires a reasonable ground for belief of guilt). Further, police barging into Nadauld's home was not justified by exigent circumstances, as Nadauld did not pose an immediate emergency to public or officer safety to justify the warrantless search. R. at 24; *see Kentucky v. King*, 563 U.S. 452, 460 (2011).

Without consent, searching private property is unreasonable unless authorized by a valid search warrant, therefore the search in the present case was entirely unreasonable. R. at 24; *Camara*, 387 U.S. at 529. *Payton v. New York* firmly established that police must obtain a warrant before arresting an individual at their home. *Payton*, 445 U.S. at 573. The Founders were concerned about judges issuing general warrants, and the Fourth Amendment specifically requires a warrant with particularity, describing the place to be searched or the persons or things to be seized. *Payton*, 455 U.S. at 574; *see Miller v. United States*, 357 U.S. 301, 307 (1958) (expressing that breaking into a citizen's home to effect an arrest invades the ancient and

precious privacy interest that a [person's] house is their castle). Without a fair probability of criminal activity, no search could be conducted. *Illinois v. Gates*, 462 U.S. 213, 213 (1983).

A. The Totality of the Circumstances Suggested There Was No Probable Cause to Search Nadauld's Residence.

In determining probable cause, courts use a "totality of the circumstances" approach which is a practical and common-sense decision. *Gates*, 462 U.S. at 213. Essentially, probable cause relates to the degree of suspicion tied to certain types of noncriminal acts. *Id.* at 244. In the present case, Officers Hawkins and Maldonado needed to have a sufficient basis of knowledge prior to the search to determine there was a fair probability or substantial chance of criminal activity. R. at 24; *id.* at 243-44. However, if these officers had a sufficient basis of knowledge to establish a substantial chance of Nadauld's alleged criminal activity, they would have obtained a warrant rather than incessantly pressure Nadauld to consent. R. at 23; *Gates*, 462 U.S. at 243-44.

To determine probable cause, courts assess probabilities in particular factual contexts. *Gates*, 462 U.S. at 232. However, the factual context leading up to the search of the house merely establishes a possibility rather than a sufficient probability to link Nadauld to the alleged crime. R. at 3. Nadauld was one of fifty people found to be on a list of assault rifle owners. R. at 3. However, Nadauld's vehicle was not found leaving Balboa Park, nor was he discovered leaving on foot at the scene of the shooting. R. at 3. The surveillance footage at the park was blurry and police could not match the identity of the forty unidentified individuals who left on foot. R. at 3. Finally, police discovered video evidence of Nadauld receiving a duffle bag from Frank McKennery at Nadauld's residence, but that does not establish a fair probability that he was involved in the shooting based on the totality of the circumstances. R. at 4.

Warrantless searches and seizures absent probable cause are contrary to the Fourth Amendment principle of prohibiting unreasonable and unwelcome intrusions on private property.

U.S. Const. amend. IV. For example, this Court recently held that police officers' community caretaking purposes do not justify warrantless searches and seizures of the home. *Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021). In *Caniglia*, Petitioner placed a handgun on his dining room table and asked his wife to shoot him. *Id.* at 1597. His wife left the home and called the police to request a welfare check. *Id.* Petitioner went to the hospital for a psychiatric evaluation. *Id.* While Petitioner was gone, police entered the home and seized his weapons. *Id.* The First Circuit erred in justifying the warrantless entry when the court "expressly disclaimed the possibility that [police] were reacting to a crime." *Id.* at 1599. This Court corrected the First Circuit's error by concluding that without a warrant, this search was an unwelcome intrusion on Petitioner's private property. *Id.* at 1599.

Like *Caniglia*, Officers Hawkins and Maldonado lacked a compelling purpose to justify a warrantless search and seizure of Nadauld's home. R. at 24; *Caniglia*, 141 S. Ct. at 1599. The mere possibility of reacting to a crime is not sufficient to justify a warrantless entry into a home. *Caniglia*, 141 S. Ct. at 1600. In the present case, police merely established a possibility of involvement in a crime, and Officers Maldonado and Hawkins did not have an open-ended license to search Nadauld's home. R. at 23, 24; *id.* This search was conducted due to mounting pressure and scrutiny from the public and media regarding the police department not finding the Balboa Park Shooter. R. at 31. The San Diego Times intensely criticized law enforcement, noting that "law enforcement's failure to find and capture the gunman [was] a humiliating catastrophe." Exhibit E. These facts alone were not sufficient to demonstrate a fair probability that Nadauld committed the alleged crime. R. at 4; *Caniglia*, 141 S. Ct. at 1600.

Absent probable cause and a warrant, Officers Maldonado and Hawkins were only permitted to take actions that any private citizen could perform. *Caniglia*, 141 S. Ct. at 1599. Importantly,

Supreme Court precedent usually requires officers to obtain a warrant before conducting a search of someone's home to guarantee an individual's constitutional right to retreat into their home free from unreasonable governmental intrusion. U.S. Const. amend. IV; *Lange v. California*, 141 S. Ct. 2011, 2017 (2021). Ultimately, if there was sufficient probable cause to search Nadauld's home, police could have quickly retrieved a search warrant approved by a detached and neutral magistrate. U.S. Const. amend. IV; *Warden v. Hayden*, 387 U.S. 294, 299 (1967). No substantial basis existed to conclude that there was probable cause. *Aguilar v. Texas*, 378 U.S. 108, 111 (1964).

B. No Valid Exigencies Created a Compelling Law Enforcement Need to Search Nadauld's Home.

Absent exigent circumstances, the threshold of the home may not be crossed without a warrant. *Payton*, 455 U.S. at 590. For an exigency to justify searching an individual's home absent a warrant, the threat of harm has to be immediate enough that obtaining a warrant would be risky. *Warden*, 387 U.S. at 299. The search must be narrowly circumscribed to the exigency justifying the search. *Id.* The exigent circumstances exception to the warrant requirement is reserved for emergency situations in which an officer has absolutely no time to secure a warrant. *Id.*; U.S. Const. amend. IV. The exigencies must make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).

Further, the seriousness of the crime alone does not qualify as an exigent circumstance. *Mincey*, 437 U.S. at 394. Exigencies that are well-recognized justifications for a warrantless search include preventing imminent destruction of evidence, rendering emergency assistance, and engaging in hot pursuit of a suspect. *King*, 563 U.S. at 460. Officers must have an

objectively reasonable basis to believe that such an exigency exists. *Michigan v. Fisher*, 558 U.S. 45, 49 (2009).

This Court's Fourth Amendment precedents require a case-by-case assessment of the claimed exigency in determining whether a warrantless entry is justified. *Lange*, 141 S. Ct. at 2013. An exigent circumstance occurs when the totality of the circumstances demonstrates police have no time to obtain a warrant. *Id.* However, in the present case, no exigencies existed to justify the warrantless search, nor was there an objectively reasonable basis to believe that an exigency existed to create a compelling law enforcement need to search Nadauld's residence. R. at 24. The fact that a homicide in the instant case occurred did not create exigent circumstances to permit police to search. R. at 1; *Mincey*, 437 U.S. at 386.

The fact that a mass shooting occurred at Balboa Park does not alone create an exigent circumstance to justify police violating an individual's Fourth Amendment right to privacy in the sanctity of their home. R. at 2; *Mincey*, 437 U.S. at 386. In *Mincey*, this Court held that the seriousness of the offense does not itself create an exigent circumstance to justify a warrantless search. *Id.* Homicide detectives arrived at Petitioner's apartment to conduct a four-day warrantless search without Petitioner's consent. *Id.* As a result of the search, Petitioner was convicted of murder. *Id.* The Arizona Supreme Court erred in holding that a warrantless search of a homicide scene is permissible under the Fourth Amendment. *Id.* at 385. This Court concluded that the search of a homicide scene should not be recognized as an additional exception to the warrant requirement. *Id.* at 390.

Like *Mincey*, Officers Hawkins and Maldonado did not have an exigent circumstance at the time of the search, and they could have easily obtained a warrant if probable cause existed. R. at 23; *Mincey*, 437 U.S. at 386. Instead of establishing probable cause and abiding by the Fourth

Amendment's presumptive requirement of obtaining a warrant prior to entering private property, Officer Hawkins "thought [he would] get a head start." R. at 23; U.S. Const. amend. IV. There was still much to investigate before linking Nadauld to the crime. R. at 23. A warrant was required to search Nadauld's home absent exigent circumstances. R. at 4; U.S. Const. amend. IV; *Warden*, 387 U.S. at 299.

Further, in *Michigan v. Fisher*, this Court determined that a warrantless entry into a home was reasonable because the exigencies of the situation were so compelling that a warrantless search was objectively reasonable. *Fisher*, 558 U.S. at 45. In *Fisher*, officers responded to a complaint of a disturbance at a home. *Id.* at 46. Upon arrival, officers found the home to be in a state of chaos. *Id.* A pickup truck was in the front driveway with its front window smashed. *Id.* There were three broken house windows and damaged fenceposts along the side of the property. *Id.* Further, blood was on the hood of the pickup truck, and Respondent was seen screaming and throwing things inside the house. *Id.* The backdoor was locked, and a couch was placed to block the front door entry. *Id.* Ultimately, because of the violent behavior and imminent need to address emergency circumstances, this Court determined the officers' entry was reasonable under the Fourth Amendment to stop the violence. *Id.* at 48.

In the instant case, unlike *Fisher*, there was no need for emergency assistance or a showing that people were in imminent danger. R. at 23; *Fisher*, 558 U.S. at 49. Nadauld did not exhibit violent behavior, appear to be in trouble, pose an imminent risk to public safety, or look to be destroying evidence when police arrived. R. at 23. Here, there was no objectively reasonable basis for believing imminent danger or harm would occur if officers did not obtain a warrant. R. at 23-24; *Fisher*, 558 U.S. at 49. Nadauld was simply at his home and not causing any sort of disturbance. R. at 23. No immediate emergency existed. R. at 4. Instead, Officers

Maldonado and Hawkins searched the home because they were upset that Nadauld did not provide consent. R. at 24.

In *Kentucky v. King*, this Court indicated that if police do not violate or threaten to violate the Fourth Amendment prior to a police-created exigency, such exigency will justify a warrantless search. *King*, 563 U.S. at 472. In *King*, officers knocked on Respondent's door before entering the apartment. *Id.* Officers later entered the apartment to prevent the destruction of evidence, a valid exigency pursuant to the Fourth Amendment. *Id.* The conduct of the police prior to entry was lawful because they did not violate the Fourth Amendment or threaten to do so. *Id.* at 455. When officers knocked on an apartment door, they could hear things being moved inside the apartment. *Id.* at 456. After officers announced that they would enter the apartment, they discovered people smoking marijuana and cocaine in plain view. *Id.* Because it appeared that evidence was going to be destroyed, the exigency of the situation made the warrantless search objectively reasonable under the Fourth Amendment. *Id.* at 460. Pursuant to *King*, police may still enter a home even if they created the exigency, but officers cannot rely on a police-created exigency if they violated or threatened to violate the Fourth Amendment. *Id.* at 472.

Unlike *King*, no police-created exigency existed to justify the warrantless search in the present case. R. at 24; *King*, 563 U.S. at 472. Even if this Court determines that a police-created exigency exists, Officers Hawkins and Maldonado threatened to violate, and ultimately violated, the Fourth Amendment when they searched Nadauld's home. R. at 24. Despite Nadauld refusing to consent to the search, Officer Hawkins ordered Officer Maldonado to "start checking the rooms." R. at 24. Officer Hawkins also threatened to violate the Fourth Amendment when he told Nadauld, "Sir, I think we need to come into the house to verify that the weapon has already been rendered inoperable." R. at 24. Even if it did appear that imminent destruction of evidence

was likely, Officers Maldonado and Hawkins acted unlawfully when they intruded on Nadauld's property and threatened to enter. R. at 23-24; *see King*, 563 U.S. at 472. Unlike *King*, the police conduct that triggered the search in the instant case was unlawful. *King*, 563 U.S. at 472.

C. The Only Way Police Could Enter Nadauld's Home Was Through Consent.

In the present case, the only way for Officers Hawkins and Maldonado to get around the warrant requirement was to obtain Nadauld's consent. R. at 23-24; *Schneckloth v. Bustamonte*, 412 U.S. 219, 228 (1973). A search warrant ensures that the inferences supporting the search are supported by a neutral and detached magistrate instead of an officer who is competitively investigating crime. *Johnson v. United States*, 333 U.S. 10, 14 (1948). Bypassing the warrant requirement prior to searching the home contradicts the meaning of the Fourth Amendment's text. U.S. Const. amend. IV; Laura K. Donahue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1181 (2016). The text carefully explains the conditions that must be met before governmental intrusion. U.S. Const. amend. IV; Donahue, *supra*, at 1181. The Court must balance the degree to which the warrantless search intrudes on the person's privacy and the degree to which the search is needed to promote legitimate governmental interests. *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999). The reasonableness standard of the Fourth Amendment generally requires law enforcement to obtain a judicial warrant before entering an individual's private home without consent. U.S. Const. amend. IV; s*ee Collins v. Virginia*, 138 S. Ct. 1663, 1675 (2018). Warrantless searches of the home are presumptively unconstitutional, and the warrantless search in the present case does not rebut this presumption. *King*, 563 U.S. at 459.

Without a warrant or exigent circumstances, police in the instant case were only constitutionally permitted to search as much as consent would have permitted. *King*, 563 U.S. at 459. While this Court in *King* determined that requiring a warrant would result in an impediment

to law enforcement's needs, the police in the present case had plenty of time to obtain a warrant if probable cause existed to search Nadauld's home. R. at 23; *King*, 563 U.S. at 466-67.

Pursuant to *Florida v. Jardines*, Officers Hawkins and Maldonado warrantlessly engaged in an unlicensed physical intrusion on private property. *Jardines*, 569 U.S. at 7. In *Jardines*, officers entered the home of an individual after a drug detection dog smelled marijuana emanating from the porch. *Id.* at 4. The dog was on the curtilage of the property, and the officers and drug detection dog did not have an implied license to physically intrude on the curtilage of the property. *Id.* at 8. Without a warrant, an implicit license only granted the police in *Jardines* permission to approach the home and knock "because that is no more than any private citizen might do." *Id.* at 2.

Like *Jardines*, Officers Maldonado and Hawkins had no invitation or license to explore Nadauld's home in hopes of finding incriminating evidence. *Jardines*, 569 U.S. at 9. Officers Hawkins and Maldonado were merely permitted to knock on the door and ask for permission to search. R. at 23; *id.* Just because the officers in the present case had an implied license to come to the front door does not invite them to search freely through the sanctity of Nadauld's private property. R. at 24; *Jardines*, 569 U.S. at 9. Without any license to search, the officers in the present case did not engage in an objectively reasonable search. R. at 24; *Jardines*, 569 U.S. at 9. Officers could only legally enter through consent and had no greater permission than the ordinary citizen to enter Nadauld's home. R. at 24; *Caniglia*, 141 S. Ct. at 1599.

D. Evidence Obtained from the Unconstitutional Search of Nadauld's Home Must Be Suppressed Because It Is Tainted.

Law enforcement exploited illegal measures to obtain evidence at Mr. Nadauld's home, and any evidence seized during an unlawful search cannot qualify as evidence against the victim of the search. U.S. Const. amend. IV. The search was conducted with only a few leads that did not

establish probable cause, and a warrant could not have been issued based on the vague information law enforcement had at the time of the warrantless search. R. at 11; *see Wong Sun v. United States*, 371 U.S. 471, 481-82 (1963). An officer simply cannot act on their own with untested information that would not rise to the level of probable cause for a warrant. *Wong Sun*, 371 U.S. at 482. Further, an unlawful search does not become lawful or validated if incriminating evidence is found, as any search must be constitutional at its inception. *Id.* at 484.

In *Wong Sun*, a federal narcotics agent made no effort to make sure that the man at the door was a subject described as "Blackie Toy." *Wong Sun*, 371 U.S. at 483. Without probable cause, the federal narcotics agent entered the subject's property and obtained incriminating evidence. *Id.* at 480. The officer in *Wong Sun* relied on vague information from an untested source. *Id.* at 482. This Court concluded that no warrant could have been issued on the unreliable information available, and the evidence obtained was thus tainted and inadmissible. *Id.* at 480. Further, this Court noted that a contrary holding would mean that a vague suspicion could qualify as probable cause for arrest. *Id.* at 484.

Like *Wong Sun*, Officers Hawkins and Maldonado relied on untested and vague information when they entered Nadauld's home. R. at 24; *Wong Sun*, 371 U.S. at 483. While law enforcement may have found incriminating evidence at Nadauld's home, the search was nevertheless unconstitutional at its inception. R. at 3; *Wong Sun*, 371 U.S. at 484. In the instant case, law enforcement lacked probable cause before barging into Nadauld's home without permission. R. at 24. With only a few legitimate leads, law enforcement merely hoped that evidence could be found at Nadauld's residence. R. at 11. Because law enforcement searched Nadauld's home with only vague information about potential criminality, evidence derived from

this unconstitutional search is tainted and must be suppressed. R. at 11; *Wong Sun*, 371 U.S. at 484.

CONCLUSION

The unwarranted use of ALPR technology to monitor Mr. Nadauld's aggregate car movements allowed the government to gather intimate details about Nadauld's personal and private life, violating his reasonable expectation of privacy. The quality and quantity of irrelevant information collected using the ALPR database amounted to an unreasonable search and therefore violated Nadauld's Fourth Amendment right to be free from intrusive searches. This Court should therefore affirm the ruling of the Court of Appeal and determine that ALPR data violates an individual's Fourth Amendment right to be free from unlawful government intrusion into their personal life.

Moreover, law enforcement engaged in an unconstitutional search of Nadauld's property, as no warrant, probable cause, exigency, or consent existed to justify law enforcement's unprovoked search. Officers lacked a sufficient basis of knowledge to establish that there was probable cause. No exigencies existed to justify a warrantless search. There is no evidence in the record that Nadauld was attempting to flee or conceal evidence, and emergency assistance was not necessary when police arrived. The only legal and constitutional manner which police could enter the home was with Nadauld's consent, and Nadauld refused to consent to the officers' entry. Because the search was unconstitutional at its inception, any incriminating evidence from the illegal search must be suppressed. For these reasons, this Court should uphold the Court of Appeal's decision and determine that the evidence obtained from the unconstitutional search should be excluded.